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January 26, 2015

**VIA ECF**

Hon. Sterling Johnson, Jr.  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201  
New York, NY 10007

Re: USA v. Durand (14-cr-247 (SJ)) – Request to Unseal Search Warrant Materials

Dear Judge Johnson:

I write in response to the Government's letter of January 23, 2015 regarding the request by The New York Times for unsealing of certain search warrant materials. We appreciate the Government's willingness to consent to the disclosure of redacted versions of materials relating to Search Warrants #2 and #3. Because we do not know what case the Government makes in its sealed submission for continuing to withhold materials pertaining to Search Warrants #1, and we have not yet seen the proposed redactions for Search Warrants #2 and #3, our response is necessarily limited.

First, the Second Circuit has recognized that "it is the responsibility of the district court to ensure that sealing documents to which the public has a First Amendment right is no broader than necessary" and that the courts' "independent review" of the materials may be necessary. *U.S. v. Aref*, 533 F.3d 72, 82 (2d Cir. 2008). We respectfully request that the Court review the proposed sealing to the extent there is any question about the need for, or the scope of, the sealing.

Second, we believe that the standard set forth in section 9-5.150 of the U.S. Attorneys' Manual is applicable here. That section creates an "affirmative obligation" for Government attorneys to review every 60 days whether sealing is still necessary "[b]ecause of the vital public interest in

open judicial proceedings.” While the section is facially directed at closed court proceedings, the review process should be employed here to assure that there is a timely release of any material once the need for sealing passes.

Third, we ask for the opportunity to challenge any redactions that appear to exceed what the law permits.

We thank the Court for its consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D E McCraw", with a long horizontal flourish extending to the right.

David E. McCraw

cc: Stuart Kaplan, Esq. (via ECF)  
Joseph Sconzo, Esq. (via ECF)  
Anthony M. Capozzolo, Esq. (via ECF)  
Marisa M. Seifan, Esq. (via ECF)  
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